IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1179 OF 2007
AND
CIVIL APPLICATION NO. 1812 OF 2007
AND
CIVIL APPLICATION NO. 1813 OF 2007
IN
WRIT PETITION NO. 6252 OF 2006

Shiv Shakti Oil Milll ....Applicant.
V/s
Pune District Central Coop. Bank Ltd. & Anr.. ....Respondents.

Mr.Tejash Dande, Adv. For the applicant.

Mr.Vilas Tapkir, Adv. For respondent No.1.

Mr.Rahul Kadam h/f Mr.Uday Warunjikar, Adv, for respondent No.3.

CORAM: A.P.DESHPANDE, J.
13/7/07

PC:

Rule.

Rule made returnable forthwith. Taken up for final hearing by consent of both the parties.

The present petitioner is proprietor of Shiv Shakti Oil Mill and the respondent No.1 is a cooperative bank. Respondent No.1 filed a dispute for recovery of amount against the present petitioner and an ex-parte award was passed by the Cooperative Court in the sum of Rs.48,59,182/-. The petitioner moved an application for setting aside the ex-parte award. By passing an ad-interim order the petitioner was directed to deposit Rs.2 lacs

pending consideration of the application for restoration. After recording of evidence and hearing the parties and on being satisfied that the ex-parte award needs to be quashed and set aside the Cooperative Court passed the order to that effect, however subject to condition that the petitioner deposits 1/3rd of the decretal amount. The said amount roughly works out to Rs.16 lacs. The petitioner being aggrieved by the said order passed by the Cooperative Court filed revision before the Cooperative Appellate Court. The Appellate Court modified the order passed by the Cooperative Court and directed the petitioner to deposit sum of Rs.10 lacs as condition for contesting the dispute on merit against which Writ Petition No.6252/05 was filed. The said writ petition came to be disposed of by an order passed by the learned Single Judge of this Court (Justice S.J.Vazifdar) on 29.1.07. As the petitioner was desirous to comply with impugned order the Court permitted the sale of property charged in favour of respondent No.1 with a view to enable the petitioner to raise funds for deposit of amount of Rs.10 lacs. This Court directed that the petitioner shall be entitled to negotiate the sale of the mortgaged properties with third party, however the sale shall not be finalised without written approval of respondent No.1-bank. It is further directed that if respondent No.1 approves the sale, the amount shall be deposited in the trial Court. It is then directed that it shall be open for the respondent No.1 to withdraw the sum of Rs.10 lacs and the balance is directed to be invested in fixed deposit by the trial Court with the respondent-bank initially for a period of one year, to be extended thereafter. Lastly the order directed that in the event of sale not materializing and the money not being deposited as aforesaid on or before 3.5.07 the impugned order shall operate. After passing of the said order though the sale has not materialized, the same reached a final stage. Thus the petitioner has filed

the above civil application No.1179/07 wherein a prayer is made to extend the time. What is relevant to note is that during pendency of the civil application the petitioner received an offer from one Mahendra Jagtap in the sum of Rs.16,25,000/-. However as the valuer of the bank had valued the property at Rs.20,50,000/- the petitioner had enquired from the buyer as to whether he is ready to raise his offer so as to match the valuation made by the bank's valuer. The purchaser has raised his offer to Rs.20,50,000/- as desired by the bank. On 29.6.07 after considering the facts and circumstances this Court had directed that the prospective buyer should file an undertaking on affidavit in this petition. The prospective buyer has filed an affidavit and has undertaken to purchase the property which is more fully described in the communication dated 29.5.07. In the undertaking filed on affidavit the prospective buyer has shown his willingness to purchase the property for Rs.20,50,000/-. It is then stated that he undertakes to pay the amount to the bank. The prospective buyer has also undertaken to pay Rs.10,00,000/- within a period of one week from the date of passing of the order and has further undertaken to pay Rs.10,50,000/- within a period of eight weeks there from. The bank is agreeable to sale the property in question to the prospective buyer, for the consideration indicated herein above, after receipt of the entire consideration. The prospective buyer is brother-in-law of the petitioner. The prospective buyer shall deposit a sum of Rs.10 lacs within one week from today with respondent-bank. Balance amount of Rs.10,50,000/- shall be deposited within a period of eight weeks from the date of deposit of Rs.10 lacs. The respondent-bank shall retain with it sum of Rs.10 lacs and invest the balance amount of Rs.10,50,000/- in a Fixed Deposit with it for a period of one year. After the deposit of the first instalment of Rs.10 lacs

the trial Court shall proceed to consider the dispute on merit and decide the same in accordance with law. Both learned counsel appearing for respective parties submit that they would be appearing before the Cooperative Court on 25.7.07 so that the matter can proceed further. Time extended and Civil Application stands disposed of in above terms.

13.7.07